

STATE OF MICHIGAN  
COURT OF APPEALS

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DAVID KNICKERBOCKER, Personal  
Representative of the Estate of MARION  
KNICKERBOCKER, Deceased,

Plaintiff-Appellee,

v

BRUCE T. KNICKERBOCKER,

Defendant-Appellant.

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UNPUBLISHED

April 28, 2005

No. 251852

Iosco Circuit Court

LC No. 01-003598-CH

Before: Kelly, P.J., and Sawyer and Wilder, JJ.

PER CURIAM.

Defendant appeals as of right from an order granting summary disposition to plaintiff pursuant to MCR 2.116(C)(10). We affirm. This case is being decided without oral argument pursuant to MCR 7.214(E).

In 1953, F. E. Knickerbocker purchased property for use as a family vacation cottage, and subsequently transferred title of the property to the family company, F. E. Knickerbocker, Inc. Subsequent to the death of F. E. Knickerbocker, ownership of the company was divided between his two sons, defendant and plaintiff's father, Joseph Knickerbocker. As part of the division of F. E. Knickerbocker's Estate, in February 1980, the company executed a warranty deed conveying the property "to Bruce T. Knickerbocker & Jewell I. Knickerbocker, his wife & Joseph R. Knickerbocker & Marion Z. Knickerbocker, his wife as *tenants in the entirety with full rights of survivorship*." (Emphasis added.) The deed was drafted by defendant, who along with Joseph Knickerbocker signed it on behalf of the company. After Marion Knickerbocker's death in March 2001, defendant became the sole surviving grantee under the deed.

Plaintiff, Marion's son, as the personal representative of his mother's estate, filed this action, seeking a ruling that, pursuant to the deed, the two couples owned the property as tenants in common, with each husband and wife owning their half as tenants by the entireties and, therefore, he was entitled to a one-half interest in the property as Marion's heir. Defendant claimed that the survivorship language in the deed granted the property to the last remaining tenant under either a joint tenancy or a tenancy in common and, therefore, he was the sole owner of the property. The trial court granted plaintiff's motion for summary disposition, concluding that there was no genuine issue of material fact with regard to the parties' intent, which was to create a tenancy in common between the two brothers and a tenancy by the entireties between each brother and his wife.

The trial court's ruling on a motion for summary disposition is reviewed de novo. *Kefgen v Davidson*, 241 Mich App 611, 616; 617 NW2d 351 (2000). Summary disposition is appropriate under MCR 2.116(C)(10) when there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. "A genuine issue of material fact exists when the record, giving the benefit of reasonable doubt to the opposing party, leaves open an issue upon which reasonable minds might differ." *West v General Motors Corp*, 469 Mich 177, 183; 665 NW2d 468 (2003) (citations omitted).

MCL 554.44 states that "[a]ll grants and devises of lands, made to 2 or more persons . . . shall be construed to create estates in common, and not in joint tenancy, unless expressly declared to be in joint tenancy." MCL 554.44 does not apply to grants made to a husband and wife. MCL 554.45 Rather, a deed of real property to a husband and wife is presumed to create a tenancy by the entireties, in which the husband and wife hold joint title with a right of survivorship. *In re VanConett Estate*, 262 Mich App 660, 667; 687 NW2d 167 (2004) (citation omitted).

On appeal, defendant asserts that the two couples were tenants in common with rights of survivorship. But there is no authority holding that a right of survivorship can attach to a tenancy in common. Rather, the purpose of the survivorship language is to distinguish between joint tenancy and joint tenancy with rights of survivorship, and is only relevant if the grant also expressly creates a joint tenancy, see *Albro v Allen*, 434 Mich 271, 275-276; 454 NW2d 85 (1990), which is not the case here.

To the extent that the insertion of "with full rights of survivorship" language caused ambiguity, the trial court correctly concluded that the ambiguity did not create a genuine issue of material fact regarding F. E. Knickerbocker, Inc.'s intent to convey the property to the two couples as tenants in common. It is undisputed that the remainder of F. E. Knickerbocker's estate was divided equally between defendant and Joseph Knickerbocker with no rights of survivorship. Further, the survivorship language, which came immediately after the phrase "tenancy in the entireties," simply emphasized that, as between each brother and his wife, the conveyance was a tenancy by the entireties, and did not relate to the tenancy between the two couples. Such an interpretation is consistent with Michigan law, and defendant concedes that the deed created a tenancy by the entireties between each brother and his wife. Moreover, as the drafter of the deed, any ambiguities in the deed are to be construed against defendant. See, e.g., *Klapp v United Ins Group Agency, Inc*, 468 Mich 459, 470; 663 NW2d 447 (2003). Consequently, we affirm the trial court's grant of summary disposition to plaintiff.

Affirmed.

/s/ Kirsten Frank Kelly  
/s/ David H. Sawyer  
/s/ Kurtis T. Wilder